

SB435 H GO AM 4-2 as amended

Thompson 3192

The Committee on Government Organization moves to amend the bill by striking out everything after the enacting section and inserting in lieu thereof the following:

"ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

§8-1-5a. Municipal Home Rule Pilot Program.

(a) *Legislative findings.* -- The Legislature finds and declares that:

(1) The initial Municipal Home Rule Pilot Program brought innovative results, including novel municipal ideas that became municipal ordinances which later resulted in new statewide statutes;

(2) The initial Municipal Home Rule Pilot Program also brought some novel municipal ideas that resulted in court challenges against some of the participating municipalities;

(3) The Municipal Home Rule Board was an essential part of the initial Municipal Home Rule Pilot Program but it lacked some needed powers and duties;

(4) Municipalities still face challenges delivering services required by federal and state law, or demanded by their constituents;

1 (5) Municipalities are sometimes restrained by state statutes,
2 policies and rules that challenge their ability to carry out their
3 duties and responsibilities in a cost-effective, efficient and
4 timely manner;

5 (6) Continuing the Municipal Home Rule Pilot Program is in the
6 public interest; and

7 (7) Increasing the powers and duties of the Municipal Home
8 Rule Board will enhance the Municipal Home Rule Pilot Program.

9 (b) *Continuance of pilot program.* -- The Municipal Home Rule
10 Pilot Program is continued until July 1, 2019. The ordinances
11 enacted by the four participating municipalities pursuant to the
12 initial Municipal Home Rule Pilot Program are hereby authorized and
13 may remain in effect until the ordinances are repealed, but are
14 null and void if amended and such amendment is not approved by the
15 Municipal Home Rule Board: *Provided*, That any ordinance enacting
16 a municipal occupation tax is hereby null and void.

17 (c) *Authorizing participation.* -- Commencing July 1, 2013, any
18 Class I, Class II, Class III and/or Class IV municipality, that is
19 current in payment of all state fees, may participate in the
20 Municipal Home Rule Pilot Program pursuant to the provisions of
21 this section: *Provided*, That the four municipalities participating
22 in the pilot program on July 1, 2012, are hereby authorized to
23 continue in the pilot program and may amend current written plans
24 and/or submit new written plans in accordance with the provisions

1 of this section.

2 (d) *Municipal Home Rule Board.* -- The Municipal Home Rule
3 Board is hereby continued. The board members serving on the board
4 on July 1, 2012, may continue to serve, except that the Chair of
5 the Senate Committee on Government Organization and the Chair of
6 the House Committee on Government Organization shall be ex officio
7 nonvoting members. Effective July 1, 2013, the Municipal Home Rule
8 Board shall consist of the following five voting members:

9 (1) The Governor, or a designee, who shall serve as chair;

10 (2) The Executive Director of the West Virginia Development
11 Office or a designee;

12 (3) One member representing the Business and Industry Council,
13 appointed by the Governor with the advice and consent of the
14 Senate;

15 (4) One member representing the largest labor organization in
16 the state, appointed by the Governor with the advice and consent of
17 the Senate; and

18 (5) One member representing the West Virginia Chapter of
19 American Institute of Certified Planners, appointed by the Governor
20 with the advice and consent of the Senate.

21 (e) *Board's powers and duties.* -- The Municipal Home Rule
22 Board has the following powers and duties:

23 (1) Establish specific eligibility criteria for the
24 application process and documentation required for participation in

1 the Municipal Home Rule Pilot Program;

2 (2) Review, evaluate, make recommendations and approve or
3 reject, by a majority vote of the board, each aspect of the written
4 plan submitted by a municipality;

5 (3) By a majority vote of the board, select, based on the
6 municipality's written plan, new Class I, Class II, Class III
7 and/or Class IV municipalities to participate in the Municipal Home
8 Rule Pilot Program;

9 (4) Review, evaluate, make recommendations and approve or
10 reject, by a majority vote of the board, the amendments to the
11 written plans submitted by municipalities;

12 (5) Approve or reject, by a majority vote of the board, each
13 ordinance submitted by a participating municipality pursuant to its
14 written plan or its amendments to the written plan;

15 (6) Consult with any agency affected by the written plans or
16 the amendments to the written plans; and

17 (7) Perform any other powers or duties necessary to effectuate
18 the provisions of this section.

19 (f) *Written plan.* -- On or before June 1, 2014, a Class I,
20 Class II, Class III or Class IV municipality desiring to
21 participate or continue to participate in the Municipal Home Rule
22 Pilot Program shall submit a written plan to the board stating in
23 detail the following:

24 (1) The specific laws, acts, resolutions, policies, rules or

1 regulations which prevent the municipality from carrying out its
2 duties in the most cost-efficient, effective and timely manner;

3 (2) The problems created by the laws, acts, resolutions,
4 policies, rules or regulations;

5 (3) The proposed solutions to the problems, including all
6 proposed changes to ordinances, acts, resolutions, rules and
7 regulations: *Provided*, That the specific municipal ordinance
8 instituting the solution does not have to be included in the
9 written plan; and

10 (4) A written opinion, by an attorney licensed to practice in
11 West Virginia, stating that the proposed written plan does not
12 violate the provisions of this section.

13 (g) *Public hearing on written plan.* -- Prior to submitting its
14 written plan to the board, the municipality shall:

15 (1) Hold a public hearing on the written plan;

16 (2) Provide notice at least thirty days prior to the public
17 hearing by a Class II legal advertisement;

18 (3) Make a copy of the written plan available for public
19 inspection at least thirty days prior to the public hearing; and

20 (4) After the public hearing, adopt an ordinance authorizing
21 the municipality to submit a written plan to the Municipal Home
22 Rule Board after the proposed ordinance has been read two times.

23 (h) *Selection of municipalities.* -- On or after June 1, 2014,
24 by a majority vote, the Municipal Home Rule Board may select from

1 the municipalities that submitted written plans and were approved
2 by the board by majority vote new Class I, Class II, Class III
3 and/or Class IV municipalities to participate in the Municipal Home
4 Rule Pilot Program.

5 (i) *Ordinance, act, resolution, rule or regulation.* -- After
6 being selected to participate in the Municipal Home Rule Pilot
7 Program and prior to enacting an ordinance, act, resolution, rule
8 or regulation based on the written plan, the municipality shall:

9 (1) Hold a public hearing on the proposed ordinance, act,
10 resolution, rule or regulation;

11 (2) Provide notice at least thirty days prior to the public
12 hearing by a Class II legal advertisement;

13 (3) Make a copy of the proposed ordinance, act, resolution,
14 rule or regulation available for public inspection at least thirty
15 days prior to the public hearing;

16 (4) After the public hearing, submit the comments, either in
17 audio or written form, to the Municipal Home Rule Board;

18 (5) Obtain approval, from the Municipal Home Rule Board by a
19 majority vote, for the proposed ordinance, act, resolution, rule or
20 regulation; and

21 (6) After obtaining approval from the Municipal Home Rule
22 Board, read the proposed ordinance, act, resolution, rule or
23 regulation at least two times.

24 (j) *Powers and duties of municipalities.* -- The municipalities

1 participating in the Municipal Home Rule Pilot Program have the
2 authority to pass an ordinance, act, resolution, rule or
3 regulation, under the provisions of this section, that is not
4 contrary to:

5 (1) Environmental law;

6 (2) Bidding on government construction and other contracts;

7 (3) The Freedom of Information Act;

8 (4) The Open Governmental Proceedings Act;

9 (5) Wages for construction of public improvements;

10 (6) The provisions of this section;

11 (7) The municipality's written plan; and

12 (8) The Constitution of the United States or West Virginia.

13 (k) *Prohibited acts.* -- The municipalities participating in
14 the Municipal Home Rule Pilot Program do not have the authority to
15 pass an ordinance, act, resolution, rule or regulation, under the
16 provisions of this section, pertaining to:

17 (1) The Constitutions of the United States or West Virginia;

18 (2) Federal law or crimes and punishment;

19 (3) Chapters sixty-a, sixty-one and sixty-two of this code or
20 state crimes and punishment;

21 (4) Pensions or retirement plans;

22 (5) Annexation;

23 (6) Taxation: *Provided*, That a participating municipality may
24 enact a municipal sales tax up to one percent if it reduces or

1 eliminates its municipal business and occupation tax: *Provided,*
2 *however,* That if a municipality subsequently reinstates or raises
3 the municipal business and occupation tax it previously reduced or
4 eliminated under the Municipal Home Rule Pilot Program, it shall
5 eliminate the municipal sales tax enacted under the Municipal Home
6 Rule Pilot Program: *Provided, further,* That any municipality that
7 imposes a municipal sales tax pursuant to this section shall use
8 the services of the Tax Commissioner to administer, enforce and
9 collect the tax in the same manner as the state consumers sales and
10 service tax and use tax under the provisions of articles fifteen,
11 fifteen-a and fifteen-b, chapter eleven of this code and all
12 applicable provisions of the streamlined sales and use tax
13 agreement: *And provided, further,* That such tax will not apply to
14 the sale of motor fuel or motor vehicles;

15 (7) Tax increment financing;

16 (8) Extraction of natural resources;

17 (9) Persons or property outside the boundaries of the
18 municipality: *Provided,* That this prohibition under the Municipal
19 Home Rule Pilot Program does not affect a municipality's powers
20 outside its boundary lines under other sections of this chapter,
21 other chapters of this code, or court decisions;

22 (10) Marriage and divorce laws;

23 (11) Restricting the carrying of a firearm, as that term is
24 defined in section two, article seven, chapter sixty-one of this

code: *Provided, That,* notwithstanding the provisions of subsection (r) of this section, municipalities may regulate the carrying of a firearm in municipal buildings dedicated to government operations, other than parking buildings or garages; and

(12) A fee or assessment payable by a non-resident of a municipality, which is substantially equivalent to an occupation tax.

(1) *Amendments to written plans.* -- A municipality selected to participate in the Municipal Home Rule Pilot Program may amend its written plan at any time.

(m) *Reporting requirements.* -- Commencing December 1, 2015, and each year thereafter, each participating municipality shall give a progress report to the Municipal Home Rule Board, and commencing January 1, 2016, and each year thereafter, the Municipal Home Rule Board shall give a summary report of all the participating municipalities to the Joint Committee on Government and Finance.

(n) Before the January 1, 2018, the Performance Evaluation and Review Division shall conduct a performance review on the pilot program and the participating municipalities and/or metro governments. The review shall include the following:

(1) An evaluation of the effectiveness of expanded home rule on the participating municipalities and/or metro governments;

(2) A recommendation as to whether the expanded home rule

1 should be continued, reduced, expanded or terminated;

2 (3) A recommendation as to whether any legislation is
3 necessary; and

4 (4) Any other issues considered relevant.

5 (o) The pilot program terminates July 1, 2019.

6 (p) No ordinances, acts, resolutions, rules or regulations may
7 be enacted by a municipality or metro government, after July 1,
8 2019, pursuant to the provisions of this section, unless otherwise
9 authorized by the Legislature.

10 (q) An ordinance, act, resolution, rule or regulation enacted
11 by a participating municipality under the provisions of this
12 section during the period of the Municipal Home Rule Pilot Program
13 shall continue in full force and effect until repealed, but is null
14 and void if it is amended and such amendment is not approved by the
15 Municipal Home Rule Board.

16 (r) *Additional requirements for participation.* -The Class I,
17 Class II, Class III and/or Class IV municipalities, that wish to
18 participate in the Municipal Home Rule Pilot Program, pursuant to
19 the provisions of this section, must agree to the requirements set
20 forth in this subsection, concerning regulation of firearms,
21 ammunition and firearm accessories: *Provided*, That if the four
22 municipalities participating in the pilot program on July 1, 2012,
23 wish to continue in the pilot program then those municipalities
24 must also agree to comply with the requirements of this subsection.

1 (1) Definitions.

2 As used in this subsection:

3 (A) 'Ammunition' means fixed cartridge ammunition, shotgun
4 shells, the individual components of fixed cartridge ammunition and
5 shotgun shells, projectiles for muzzle-loading firearms and any
6 propellant used in firearms or ammunition.

7 (B) 'Firearm accessory' means a device specifically designed
8 or adapted to enable the wearing or carrying about one's person, or
9 the storage or mounting in or on a conveyance, of a firearm, or an
10 attachment or device specifically designed or adapted to be
11 inserted into or affixed onto a firearm to enable, alter or improve
12 the functioning or capabilities of the firearm.

13 (C) 'Firearm' has the same meaning as in section two, article
14 seven of chapter sixty-one.

15 (2) General rule.

16 (A) Notwithstanding any other provision of this code to the
17 contrary, except as otherwise provided for within this section,
18 municipalities participating in the home rule program pursuant to
19 this section shall not restrict in any manner the right of any
20 person to purchase, possess, transfer, own, carry, transport, sell
21 or store any revolver, pistol, rifle or shotgun, or any other
22 firearm, or any ammunition or ammunition components to be used
23 therewith, or the keeping of gunpowder so as to directly or
24 indirectly prohibit the ownership of the ammunition, or, to

1 restrict in any manner the right of any person to purchase,
2 possess, transfer, own, carry, transport, sell or store any other
3 firearm accessory or accouterment; to the complete exclusion of any
4 order, ordinance or rule promulgated or enforced by any political
5 subdivision of this state.

6 (B) The authority of a political subdivision to regulate
7 firearms, ammunition, or firearm accessories may not be inferred
8 from its proprietary authority, home rule status or any other
9 inherent or general power.

10 (C) Any existing or future orders, ordinances, or rules
11 promulgated or enforced in violation of this subsection are null
12 and void.

13 (3) Applicability and effective dates.

14 This subsection applies to any order, ordinance or rule
15 adopted by a municipality covered by the provisions of this section
16 or to official actions taken by an employee or agent of such
17 municipality, on or after the effective date of this article. Upon
18 the effective date of this article, any grandfathered municipal gun
19 ordinances which were in effect at the time of the original passage
20 of section five-a, article twelve, chapter eight of this code shall
21 no longer be of any force or effect for any municipality
22 participating in this program, to the extent they are in conflict
23 with the provisions of this article: *Provided*, That no provision in
24 this subsection may be construed to limit the authority of a county

1 or municipality to restrict the commercial use of real estate in
2 designated areas through planning or zoning ordinances."